

Effective 9/1/2024

**Part 1
General Provisions**

Effective 9/1/2024

75A-5-101 Reserved.

Reserved.

Enacted by Chapter 364, 2024 General Session

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75A-5-102 Definitions for chapter.

As used in this chapter:

- (1)
 - (a) "Accounting period" means a calendar year, unless a fiduciary selects another period of 12 calendar months or approximately 12 calendar months.
 - (b) "Accounting period" includes a part of a calendar year or another period of 12 calendar months or approximately 12 calendar months that begins when an income interest begins or ends when an income interest ends.
- (2)
 - (a) "Asset-backed security" means a security that is serviced primarily by the cash flows of a discrete pool of fixed or revolving receivables or other financial assets that by the financial assets' terms convert into cash within a finite time.
 - (b) "Asset-backed security" includes rights or other assets that ensure the servicing or timely distribution of proceeds to the holder of the asset-backed security.
 - (c) "Asset-backed security" does not include an asset to which Section 75A-5-401, 75A-5-409, or 75A-5-414 applies.
- (3) "Beneficiary" includes:
 - (a) for a trust:
 - (i) a current beneficiary, including a current income beneficiary and a beneficiary that may receive only principal;
 - (ii) a remainder beneficiary; and
 - (iii) any other successor beneficiary;
 - (b) for an estate, an heir and devisee; and
 - (c) for a life estate or term interest, a person that holds a life estate, term interest, or remainder, or other interest following a life estate or term interest.
- (4) "Court" means a court in this state with jurisdiction over a trust or estate, or a life estate or other term interest described in Subsection 75A-5-103(2).
- (5) "Current income beneficiary" means a beneficiary to which a fiduciary may distribute net income, even if the fiduciary also may distribute principal to the beneficiary.
- (6)
 - (a) "Distribution" means a payment or transfer by a fiduciary to a beneficiary in the beneficiary's capacity as a beneficiary, made under the terms of the trust, without consideration other than the beneficiary's right to receive the payment or transfer under the terms of the trust.
 - (b) "Distribute," "distributed," and "distributee" have corresponding meanings.
- (7)
 - (a) "Estate" means a decedent's estate.

- (b) "Estate" includes the property of the decedent as the estate is originally constituted and the property of the estate as it exists at any time during administration.
- (8) "Fiduciary" includes:
 - (a) a trustee, trust director as defined in Section 75-12-102, personal representative, life tenant, holder of a term interest, and person acting under a delegation from a fiduciary;
 - (b) a person that holds property for a successor beneficiary whose interest may be affected by an allocation of receipts and expenditures between income and principal; and
 - (c) if there are two or more co-fiduciaries, all co-fiduciaries acting under the terms of the trust and applicable law.
- (9)
 - (a) "Income" means money or other property a fiduciary receives as current return from principal.
 - (b) "Income" includes a part of receipts from a sale, exchange, or liquidation of a principal asset to the extent provided in Part 4, Allocation of Receipts.
- (10)
 - (a) "Income interest" means the right of a current income beneficiary to receive all or part of net income, whether the terms of the trust require the net income to be distributed or authorize the net income to be distributed in the fiduciary's discretion.
 - (b) "Income interest" includes the right of a current beneficiary to use property held by a fiduciary.
- (11) "Independent person" means a person that is not:
 - (a) for a trust:
 - (i) a qualified beneficiary as determined under Section 75-7-103;
 - (ii) a settlor of the trust; or
 - (iii) an individual whose legal obligation to support a beneficiary may be satisfied by a distribution from the trust;
 - (b) for an estate, a beneficiary;
 - (c) a spouse, parent, brother, sister, or issue of an individual described in Subsection (11)(a) or (b);
 - (d) a corporation, partnership, limited liability company, or other entity in which persons described in Subsections (11)(a) through (c), in the aggregate, have voting control; or
 - (e) an employee of a person described in Subsection (11)(a), (b), (c), or (d).
- (12) "Mandatory income interest" means the right of a current income beneficiary to receive net income that the terms of the trust require the fiduciary to distribute.
- (13)
 - (a) "Net income" means:
 - (i) the total allocations during an accounting period to income under the terms of a trust and this chapter minus the disbursements during the accounting period, other than distributions, allocated to income under the terms of the trust and this chapter; and
 - (ii) to the extent the trust is a unitrust under Part 3, Unitrust, the unitrust amount determined under Part 3, Unitrust.
 - (b) "Net income" includes an adjustment from principal to income under Section 75A-5-203.
 - (c) "Net income" does not include an adjustment from income to principal under Section 75A-5-203.
- (14) "Person" means:
 - (a) an individual;
 - (b) an estate;
 - (c) a trust;
 - (d) a business or nonprofit entity;
 - (e) a public corporation, government or governmental subdivision, agency, or instrumentality; or

- (f) any other legal entity.
- (15) "Personal representative" means an executor, administrator, successor personal representative, special administrator, or person that performs substantially the same function with respect to an estate under the law governing the person's status.
- (16) "Principal" means property held in trust for distribution to, production of income for, or use by a current or successor beneficiary.
- (17) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.
- (18) "Settlor" means the same as that term is defined in Section 75-7-103.
- (19) "Special tax benefit" means:
 - (a) exclusion of a transfer to a trust from gifts described in Section 2503(b) of the Internal Revenue Code because of the qualification of an income interest in the trust as a present interest in property;
 - (b) status as a qualified subchapter S trust described in Section 1361(d)(3) of the Internal Revenue Code at a time the trust holds stock of an S corporation described in Section 1361(a)(1) of the Internal Revenue Code;
 - (c) an estate or gift tax marital deduction for a transfer to a trust under Section 2056 or 2523 of the Internal Revenue Code that depends or depended in whole or in part on the right of the settlor's spouse to receive the net income of the trust;
 - (d) exemption in whole or in part of a trust from the federal generation-skipping transfer tax imposed by Section 2601 of the Internal Revenue Code because the trust was irrevocable on September 25, 1985, if there is any possibility that:
 - (i) a taxable distribution, as defined in Section 2612(b) of the Internal Revenue Code, could be made from the trust; or
 - (ii) a taxable termination, as defined in Section 2612(a) of the Internal Revenue Code, could occur with respect to the trust; or
 - (e) an inclusion ratio, as defined in Section 2642(a) of the Internal Revenue Code, of the trust which is less than one, if there is any possibility that:
 - (i) a taxable distribution, as defined in Section 2612(b) of the Internal Revenue Code, could be made from the trust; or
 - (ii) a taxable termination, as defined in Section 2612(a) of the Internal Revenue Code, could occur with respect to the trust.
- (20) "Successive interest" means the interest of a successor beneficiary.
- (21) "Successor beneficiary" means a person entitled to receive income or principal or to use property when an income interest or other current interest ends.
- (22) "Terms of a trust" means:
 - (a) except as otherwise provided in Subsection (22)(b), the manifestation of the settlor's intent regarding a trust's provisions as:
 - (i) expressed in the trust instrument; or
 - (ii) established by other evidence that would be admissible in a judicial proceeding;
 - (b) the trust's provisions as established, determined, or amended by:
 - (i) a trustee or trust director in accordance with applicable law;
 - (ii) a court order; or
 - (iii) a nonjudicial settlement agreement under Section 75-7-110;
 - (c) for an estate, a will; or
 - (d) for a life estate or term interest, the corresponding manifestation of the rights of the beneficiaries.
- (23)

- (a) "Trust" includes:
 - (i) an express trust, private or charitable, with additions to the trust, wherever and however created; and
 - (ii) a trust created or determined by judgment or decree under which the trust is to be administered in the manner of an express trust.
 - (b) "Trust" does not include:
 - (i) a constructive trust;
 - (ii) a resulting trust, conservatorship, guardianship, multi-party account, custodial arrangement for a minor, business trust, voting trust, security arrangement, liquidation trust, or trust for the primary purpose of paying debts, dividends, interest, salaries, wages, profits, pensions, retirement benefits, or employee benefits of any kind; or
 - (iii) an arrangement under which a person is a nominee, escrowee, or agent for another.
- (24)
- (a) "Trustee" means a person, other than a personal representative, that owns or holds property for the benefit of a beneficiary.
 - (b) "Trustee" includes an original, additional, or successor trustee, whether appointed or confirmed by a court.
- (25)
- (a) "Will" means any testamentary instrument recognized by applicable law that makes a legally effective disposition of an individual's property effective at the individual's death.
 - (b) "Will" includes a codicil or other amendment to a testamentary instrument.

Renumbered and Amended by Chapter 364, 2024 General Session

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75A-5-103 Scope.

Except as otherwise provided in the terms of a trust or this chapter, this chapter applies to:

- (1) a trust or estate; and
- (2) a life estate or other term interest in which the interest of one or more persons will be succeeded by the interest of one or more other persons.

Renumbered and Amended by Chapter 364, 2024 General Session

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75A-5-104 Governing law.

- (1) Except as otherwise provided in the terms of a trust or this chapter, this chapter applies when this state is:
 - (a) the principal place of administration of a trust or estate; or
 - (b) the situs of property that is not held in a trust or estate and is subject to a life estate or other term interest described in Subsection 75A-5-103(2).
- (2) By accepting the trusteeship of a trust having the trust's principal place of administration in this state or by moving the principal place of administration of a trust to this state, the trustee submits to the application of this chapter to any matter within the scope of this chapter involving the trust.

Renumbered and Amended by Chapter 364, 2024 General Session